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No. 08-947

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SUPREME COURT, U.S.

In The

Supreme Court of the United States

THE BANDER FAMILY PARTNERSHIP, L.P.,
Petitioner,

v.

TOWERHILL WEALTH MANAGEMENT, LLC,
TOWERHILL US EQUITIES, LLC,
TOWERHILL INTERNATIONAL EQUITIES, LLC,
and TOWERHILL LONG/SHORT EQUITY, LLC,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of the State of Delaware

PETITIONER'S REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTRODUCTION 1

ARGUMENT 2

1. Petitioner's Arbitration Demand and Notice of Appeal Submitted Meritorious Claims To Arbitration And Presented A Meritorious Appeal From The Preliminary Injunction Against Arbitration 2

2. The Existence Of Appeal Rights Should Be Decided Without Regard To The Anticipated Merits Of The Appeal 7

3. Bander Took Every Step Available Under The Delaware Supreme Court's Rules To Alert the Delaware Supreme Court To Bander's Claimed Federal Right Of Appeal From The Injunction Against Arbitration. . 8

4. There Is A Clear Split of Authority On The Question Presented 11

CONCLUSION 12

APPENDIX

Appendix 1: Delaware Supreme Court Rule 7 . 1a

Appendix 2: Delaware Supreme Court Form A 6a

Appendix 3: Delaware Supreme Court Form M 10a

Appendix 4: Delaware Supreme Court letter to counsel regarding supplemental notice, dated September 18, 2008 ..... 13a

TABLE OF AUTHORITIES

CASES

A.G. Edwards & Sons, Inc. v. Clark,
558 So. 2d 358 (Ala. 1990) 11

Bailey v. Bender,
1992 WL 113452 (Del. Ch. May 26, 1992) 7

Championcomm.net of Tuscaloosa, Inc. v. Morton,
__ So.2d __, 2009 WL 51270
(Ala. Jan. 9, 2009) 11

Dakota Wesleyan Univ. v. HPG Int'l, Inc.,
1997 S.D. 30, 560 N.W.2d 921 (S.D. 1997) . . . 11

Dunn Indus. Group, Inc. v. City of Sugar Creek,
112 S.W.3d 421 (Mo. 2003) 6

Dyre Law Firm, PLLC v. Bradley,
874 So.2d 984 (Miss. 2004) 11

Fritz v. Nationwide Mut. Ins. Co.,
1990 WL 186448 (Del. Ch. Nov. 26, 1990) 7

Gregory v. Ashcroft,
501 U.S. 452 (1991) 11-12

James & Jackson, LLC v. Willie Gary, LLC,
906 A.2d 76 (Del. 2006) 7

Johnson v. Lebert Constr., Inc.,
736 N.W.2d 878 (S.D. 2007) 11

Kansas City Urology, P.A. v. United Healthcare Services,
2008 WL 2726919 (Mo. App. W.D. July 15, 2008) 6

Schuss v. Penfield Pr's, L.P.,
2008 WL 2433842 (Del. Ch. June 13, 2008) . . . 4

Shales v. General Chauffeurs, Sales Drivers and Helpers Local Union No. 330,
__ F.3d __, 2009 WL 483193 (7th Cir., Feb. 27, 2009) 7-8

Shaw Group Inc. v. Triplefine Int'l Corp.,
322 F.3d 115 (2d Cir. 2003) 7

Smith v. Parkerson Lumber, Inc.,
890 So.2d 832 (Miss. 2003) 11

Spalding v. Mason,
161 U.S. 375 (1896) 4

Terminix Intern. Co. L.P. v. Palmer Ranch Ltd. P'ship,
432 F.3d 1327 (11th Cir. 2005) 7

URS Co.-Kansas City v. Titus County Hosp. Dist,
604 F. Supp. 423 (W.D. Mo. 1985) 6

STATUTES AND RULES

9 U.S.C. §16(a)(2) . . . . . *passim*

10 Del. C. §5702(c) 7

10 Del. C. §5703(b) 7

Del. S. Ct. R. 7 8

Del. S. Ct. R. 42 ..... 8, 9, 10

PETITIONER'S REPLY BRIEF IN SUPPORT OF ITS PETITION FOR A WRIT OF CERTIORARI

INTRODUCTION

Respondents do not dispute that this case presents an important issue of federal law that this Court has not previously addressed:

> Does Section 16(a)(2) of the Federal Arbitration Act (the "FAA"), 9 U.S.C. §16(a)(2), confer on a party preliminarily enjoined by a state court from arbitrating a dispute involving commerce a right of appeal from that injunction?

Instead, they argue the Court should decline to use this case as the vehicle to resolve this unsettled aspect of federal arbitration law because of (a) supposed weaknesses in Petitioner's case on the merits, (b) a purported waiver of the question presented, and (c) the split of authority Petitioner described is illusory.

Respondents' arguments are factually unfounded and logically fallacious. They should be rejected, and the Writ should issue.

ARGUMENT

1. Petitioner's Arbitration Demand and Notice of Appeal Submitted Meritorious Claims To Arbitration And Presented A Meritorious Appeal From The Preliminary Injunction Against Arbitration.

The Brief in Opposition for Respondents ("Resp. Br.") argues that Petitioner, The Bander Family Partnership, L.P. ("Bander") is engaged in frivolous litigation with Respondents, and that the Petition for Writ of Certiorari ("Ptn.") should be denied for that reason. Respondents are wrong.

Bander is not engaged in frivolous litigation. Bander and its investment advisor, Respondent TowerHill Wealth Management, LLC (the "Advisor") agreed in an investment advisory agreement (the "IAA") to resolve their disputes through binding arbitration. Ptn. 111a, ¶17. Bander commenced an arbitration in accordance with the IAA. The Advisor and three limited liability companies managed and controlled by the Advisor, Respondents TowerHill US Equities, LLC, TowerHill Long/Short Equity, LLC, and TowerHill International Equities, LLC (collectively, the "Investment LLCs") then sued Bander to enjoin the arbitration (and avoid the Advisor's contractual agreement to arbitrate its disputes with Bander). Bander's defense of the litigation has been consistently aimed at bringing it to conclusion so that the (now enjoined) arbitration can be resumed.

Contrary to Respondent's description (Resp. Br. 2-3, 7), the disputes between Bander and the Advisor do not involve a claim for $150,000 in interest on

Bander's capital accounts with the Investment LLCs. The disputes arise from the Advisor's persistent refusals to:

(1) provide Bander with accounting information TowerHill was contractually obliged to furnish Bander;[1]

(2) deliver to Bander $1.8 million the Advisor reported was due Bander upon Bander's December 31, 2007 redemption of investments controlled by the Advisor;[2] and

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[1] The Advisor's obligations to provide the accounting information are specified in the IAA (Ptn. 107a, ¶6) and the Investment LLCs' operating agreements. Resp. Br. 22a – 25a. The Advisor's refusals to provide the information are described in Bander's Demand for Arbitration and Statement of Claim (the "Demand"). Ptn. 127a, ¶3.a, 133a – 135a, ¶¶21 – 27. The Demand expressly requests an accounting. Ptn. 140a – 141a, ¶¶5 – 6.

[2] Bander's redemption of its membership interests in the Investment LLCs was effective December 31, 2007. Ptn. 132a, ¶16. The Advisor (belatedly) reported to Bander that the Redemption Value of Bander's investments the Advisor managed pursuant to the IAA and through the Investment LLCs was approximately $18.8 million. Ptn. 134a – 137a, ¶¶23 – 24, 28, 31, 33. The Advisor was obliged to pay Bander the Redemption Value of Bander's interests "as soon as reasonably practicable" – not simply by the "drop dead" dates described in Respondents' Brief. *Compare* Resp. Br. 2 (referencing payment dates keyed to 30 days after the Valuation Date and "after an audit") *with* Resp. Br. 16a. Bander's Demand explicitly alleged this obligation and its breach through late payments of 90% of the Redemption Values and improper withholding of the remaining $1.8 million. Ptn. 130a – 131a, ¶¶10 – 13; 132a – 133a, ¶¶17 – 19, 135a – 137a, ¶¶28 – 34, 138a – 140a, ¶¶3.a – 3.d.

Post-Demand, the Advisor paid Bander approximately $0.8

(3) pay Bander interest on the funds due Bander from and after the points in time when the payments became past due.[3]

The disputes between Bander and the Advisor do involve the Advisors' duties as Manager of the Investment LLCs. That does not mean they are not disputes the Advisor and Bander agreed "shall" be resolved through binding arbitration pursuant to the American Arbitration Association's (the "AAA") Commercial Arbitration Rules: disputes "arising out of or relating to" the IAA. Ptn. 111a, ¶17.

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million of the $1.8 million reportedly due Bander, and Bander learned that the Advisor did not have sufficient cash under its control to pay the entire $18.8 million due Bander until January 7, 2008. Thus, when the arbitration resumes, Bander expects to seek (1) an accounting, (2) payment of $1 million in principal (and whatever other sums are due as shown by the accounting), and (3) interest on portions of the principal only from January 7, 2008, rather than January 2, 2007 as described in the Demand.

[3] Under Delaware law, when a member of an entity like the Investment LLCs withdraws, it ceases to have a capital stake in the entity, and becomes a creditor. *Schuss v. Penfield Pr's, L.P.*, 2008 WL 2433842 (Del. Ch. June 13, 2008). Consequently, section 3.4 of the Investment LLCs' operating agreements cited by Respondents as controlling Bander's right to interest on money distributable following Bander's withdrawal from membership in the Investment LLC (Resp. Br. 2 – 3) is inapposite to Bander's claim. Bander is seeking interest on past due payments. This Court has long recognized the right of payees to such interest. *Spalding v. Mason*, 161 U.S. 375, 396 (1896).

Bander's investments in membership interests in the Investment LLCs were made pursuant to the IAA.[4] The Advisor created the Investment LLCs as vehicles through which the Advisor would manage its clients' (including Bander's) investments. The Advisor was discharging its obligations under the IAA by serving as the Investment LLCs' Manager.[5] Indeed, the Advisor's sole permitted compensation for its services as Manager of the Investment LLCs was the investment advisory fees the Advisor earned and was paid pursuant to the IAA (and similar advisory agreements between the Advisor and its other clients). Resp. Br.

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[4] The IAA lists the eligible managers and the eligible investment vehicles through which the various eligible managers are to be retained. Ptn. 113a – 114a. Each of the Investment LLCs appears on that list (under its former name) as an eligible investment vehicle. *Id.; see discussion at* Ptn. 8, n.5.

[5] Paragraph 1 of the IAA (Ptn. 103a), obliged the Advisor to "select one or more investment managers . . . to provide investment advice with respect to" Bander's assets placed under Advisor's management. With respect to the $12.6 million of Bander's money invested through the Investment LLCs, the Advisor discharged this IAA – created obligation by (a) selecting the Investment LLCs as investment vehicles for Bander's money, and then (b) as the Manager of the Investment LLCs, engaging the services of investment managers to the Investment LLCs. Bander's money did not pass from the Advisor's control when the Advisor caused Bander to purchase membership interests in the Investment LLCs. As the Manager of each Investment LLC (Ptn. 29a; 129a), the Advisor was "solely responsible for the operations of the business and affairs of" each Investment LLC. Resp. Br. 2a, §1.3; *see also*, Resp. Br. 18a – 21a, Art. VII. Consequently, the Advisor's actions as Manager of the Investment LLCs, while authorized by the Investment LLCs' operating agreements, were undertaken by the Advisor to discharge its IAA-prescribed obligations to Bander.

21a, ¶7.5. Consequently, even where the propriety of the Advisor's actions is measured by a standard prescribed by an Investment LLCs' operating agreement, disputes over the Advisor's adherence to that standard fall comfortably within the broad scope of the IAA's arbitration clause. *Dunn Indus. Group, Inc. v. City of Sugar Creek,* 112 S.W.3d 421, 428 (Mo. 2003); *Kansas City Urology, P.A. v. United Healthcare Services,* 2008 WL 2726919, *3 (Mo. App. W.D. July 15, 2008); *URS Co.-Kansas City v. Titus County Hosp. Dist,* 604 F. Supp. 423 (W.D. Mo. 1985).[6]

Respondents assert that Bander's claims "arise under" the Investment LLCs' operating agreements. From that premise, they argue those claims are not arbitrable pursuant to the IAA and the arbitration was properly enjoined. Resp. Br. 5 - 7. Arbitrability pursuant to the IAA does not depend upon whether a dispute "arises under" the Investment LLCs' operating agreement. Those agreements are not mentioned in the IAA's arbitration clause. Under the IAA's arbitration clause Bander and the Advisor "shall" resolve through binding AAA arbitration disputes "arising out of or relating to" the IAA. Ptn. 111a, ¶17. The disputes described in Bander's Demand are such disputes.

The Delaware Supreme Court need not – and actually should not – decide whether Bander's dispute with the Advisor is arbitrable pursuant to the IAA in arriving at a decision to vacate the injunction against the arbitration. The injunction should be vacated

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[6] The IAA has a Missouri choice of law provision. The law of other states and the federal courts is in accord.

because (1) the Court of Chancery has no jurisdiction over Bander[7], (2) the Court of Chancery is only authorized to enjoin arbitrations where (a) a valid arbitration agreement was not made, or (b) the claim sought to be arbitrated is barred by the limitation in 10 Del. C. §5702(c)[8] (and neither of these criteria is satisfied in this case); and (3) by agreeing to arbitrate under AAA Rules, Bander and the Advisor clearly and unmistakably evinced their agreement that arbitrators, not the courts, should determine arbitrability.[9] Ptn. 78a – 102a.

2. The Existence Of Appeal Rights Should Be Decided Without Regard To The Anticipated Merits Of The Appeal.

The question presented to this Court concerns the existence of a right to appeal from an interlocutory order enjoining an arbitration proceeding. The existence or absence of a right of appeal must always be determined independently of the underlying merits of the appeal. *Shales v. General Chauffeurs, Sales*

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[7] The Court of Chancery relied on conditional consents to jurisdiction even though it is undisputed that the condition precedent to those consents had not occurred. Ptn. 55a – 56a; 79a.

[8] *Bailey v. Bender*, 1992 WL 113452 (Del. Ch. May 26, 1992); *Fritz v. Nationwide Mut. Ins. Co.*, 1990 WL 186448, at *2 (Del. Ch. Nov. 26, 1990) (stating that the grounds specified in 10 Del. C. §5703(b) are the only grounds upon which an arbitration proceeding may be enjoined by the Court of Chancery).

[9] *James & Jackson, LLC v. Willie Gary, LLC*, 906 A.2d 76, 80 (Del. 2006); *see also, Terminix Intern. Co. L.P. v. Palmer Ranch Ltd. P'ship*, 432 F.3d 1327, 1332 (11th Cir. 2005); *Shaw Group Inc. v. Triplefine Int'l Corp.*, 322 F.3d 115, 120 – 122 (2d Cir. 2003).

Drivers and Helpers Local Union No. 330, __ F.3d __, 2009 WL 483193, *2 (7th Cir., Feb. 27, 2009). Consequently, neither the strength of Bander's claims against the Advisor nor any supposed weaknesses of Bander's appeal from the preliminary injunction against arbitration should factor into this Court's decisions to grant the Petition and order the Delaware Supreme Court to hear Bander's appeal.

3. Bander Took Every Step Available Under The Delaware Supreme Court's Rules To Alert the Delaware Supreme Court To Bander's Claimed Federal Right Of Appeal From The Injunction Against Arbitration.

Respondents maintain that this Court should reject Bander's Petition because "Bander did not properly brief the issue [presented in this case] under Delaware Rules". Resp. Br. 7. Respondents do not cite even a single Delaware Rule that permitted, much less required, Bander to do more than it did to invoke its right of appeal pursuant to 9 U.S.C. §16(a)(2). Respondents' Brief is devoid of citation to any such Rule for the simple reason that none exists.

The Delaware Supreme Court has by Rule prescribed very specific ways in which appeals to that court must be commenced. Rule 7, Del. S. Ct. Rules;[10] Rule 42, Del. S. Ct. Rules.[11] These prescriptions include requirements that "The notice of appeal . . .

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[10] The text of Rule 7 of the Delaware Supreme Court's Rules is reproduced in the appendix to this Brief at pp. 1a - 5a.

[11] The text of Rule 42 of the Delaware Supreme Court's Rules appears in the appendix to the Petition. Ptn. 144a - 150a.

shall: . . . . (7) Comply substantially with Official Forms A and B of these Rules" (Rule 7(c)(7), Del. S. Ct. Rules) and "The notice of appeal . . . shall comply with this rule, Rules 6 and 7 of this Court and with such version of Official Form M as shall be applicable to the situation". Rule 42(d)(ii), Del. S. Ct. Rules.

The "Forms" referenced in the above quoted Rules allow no briefing.[12] The most Bander could reasonably do to invoke its rights under Section 16(a)(2) before the Delaware Supreme Court accepted its appeal was that which Bander did: to ask the court, at the outset of the notice of appeal, to:

> PLEASE TAKE NOTICE that pursuant to 9 U.S.C. §16(a)(2) . . . the Bander Family Partnership, L.P. (the "Partnership") does hereby appeal . . . from the order of the Court of Chancery . . . enjoining an arbitration . . . .

Ptn. 73a.

After Bander filed its notice of appeal, the court gave notice that no further action would be taken on the appeal until the Supplemental Notice (required by Rule 42(d)(iii), Del. S. Ct. Rules) was filed.[13] Pursuant to Rule 42(d)(iv)(B), Del. S. Ct. Rules, the briefing process for interlocutory appeals does not commence until "the third day following the acceptance of the interlocutory appeal . . ." The Delaware Supreme

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[12] Form A is reproduced in the appendix at pp. 6a - 9a. Form M is reproduced at pp. 10a - 12a.

[13] This notice is reproduced in the Appendix to this Brief at 13a.

Court refused Bander's appeal. Ptn. 1a – 3a. Consequently, Bander had no opportunity to brief the question presented to this Court. As there was no "opening brief" filed with the Delaware Supreme Court, Respondents' argument that Bander waived the issue presented in its Petition by not addressing it in the text of a brief to the Delaware Supreme Court (Resp. Br. 8 – 9) is unfounded and untenable.

The steps Bander took in accordance with the Delaware Supreme Court's Rules clearly alerted everyone to its claimed right of appeal pursuant to Section 16(a)(2). Respondents addressed the claimed right in their opposition to Bander's Application for Certification of Interlocutory Appeal.[14] The Court of Chancery wrote extensively on the issue in its opinion denying that Application. Ptn. 7a, n.3. The Delaware Supreme Court reviewed the Court of Chancery's opinion (*see* Ptn. 2a, ¶(1)). Its decision not to mention, much less analyze on the record, Bander's claimed right under 16(a)(2) may have been a calculated one.

This Court should not refuse to hear cases arising from state courts' refusals to recognize claimed federal rights because the state court omits to mention or analyze the claimed right on the record. Such a policy would enable state courts refusing to enforce claimed federal rights to avoid review by the simple expedient of remaining silent on the point, and this Court's constitutional role as the final arbiter of federal rights exercisable in state courts would be surrendered.

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[14] Bander was not permitted to reply to this opposition. Rule 42(c), Del. S. Ct. Rules.

4. There Is A Clear Split of Authority On The Question Presented.

Respondents deny the existence of a true split of authority on the question presented. Resp. Br. 9 – 11. They have fodder for this argument only because those state courts that have expressly recognized the applicability of Section 16(a)(2) to their proceedings have not seen any basis for argument that the statute does not apply to their proceedings. But those courts have an acknowledged obligation to examine their jurisdiction. *Smith v. Parkerson Lumber, Inc.*, 890 So.2d 832, 834 (Miss. 2003); *Championcomm.net of Tuscaloosa, Inc. v. Morton*, __ So.2d __, 2009 WL 51270, at *1 (Ala. Jan. 9, 2009); *Johnson v. Lebert Constr., Inc.*, 736 N.W.2d 878, 879 (S.D. 2007). Section 16(a)(2) was a source of the courts' jurisdiction to hear the interlocutory appeals in *Dyre Law Firm, PLLC v. Bradley*, 874 So.2d 984, 986 (Miss. 2004); *A.G. Edwards & Sons, Inc. v. Clark*, 558 So. 2d 358, 360 (Ala. 1990); and *Dakota Wesleyan Univ. v. HPG Int'l,, Inc.*, 1997 S.D. 30, ¶ 7-11, 560 N.W.2d 921, 922 - 23 (S.D. 1997). Respondents' argument that these courts did not actually decide whether Section 16(a)(2) applied in their proceedings is simply mistaken.

Respondents raise the spectre of hazards to federalism if this Court considers whether Section 16(a)(2) should be applied as Congress wrote it -- i.e., to all interlocutory orders enjoining arbitration of disputes pursuant to agreements evidencing transactions in commerce. Resp. Br. 11 – 14. This may bear on the merits of the question presented, but not on whether this Court should grant the Petition in this case. But if, as Respondents argue, the "plain statement" rule discussed in *Gregory v. Ashcroft*, 501

U.S. 452, 460 – 61 (1991) applies, it supports Bander's position in this case. As Respondents highlight (Resp. Br. 12 – 14), the FAA shows that when Congress intends to limit the reach of legislation to cases in federal courts, it knows how to do so and does so expressly. In the context of such a statute, what statement of intent that a provision apply in *all* cases could be plainer than Section 16(a)(2)?:

> An appeal may be taken from . . .
>
> (2) an interlocutory order granting, continuing, or modifying an injunction against an arbitration that is subject to this title; . . . .

9 U.S.C. §16(a)(2).

CONCLUSION

For all of the foregoing reasons, this Court should grant Bander's Petition and issue its writ of certiorari to the Supreme Court of the State of Delaware

Respectfully submitted,

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APPENDIX

APPENDIX 1

Delaware Rules of Court
Rules of the Supreme Court
Part II. Appeals--General

RULE 7. COMMENCEMENT OF APPEAL

(a) Notice of Appeal. An appeal shall be commenced by a notice of appeal. The notice of appeal shall be served in duplicate upon an attorney of record for each party to the proceeding below; if there is no such attorney it shall be served upon each party in the manner provided in these Rules for service of papers. Immediately following such service, such appellant shall file with the Clerk of this Court such notice, in duplicate, together with proof of service as provided in these Rules. The Clerk shall forthwith forward the duplicate thereof to the clerk of the trial court for filing in such court. Appeals from interlocutory orders shall be governed by Rule 42.

(b) Cross-Appeal. Any party may cross-appeal from any judgment or order from which an appeal may be taken.

(c) Form of Notice of Appeal or Cross-Appeal. The notice of appeal or cross-appeal shall:

(1) *Court.* Name the court from which the appeal is taken, name the judge entering the judgment and identify the case number therein;

(2) *Party or Parties; Attorney or Attorneys.* Name the party or parties taking the appeal and the party or parties against whom the appeal is taken and provide the name and address of each party's attorney of record below, except as hereafter provided;

(3) *Judgment Reviewed.* Designate the judgment or order, or part thereof, sought to be reviewed and the date thereof and, in a direct appeal of a criminal conviction, state the names of all codefendants with whom the appellant was tried, the date of the sentence from which the appeal is taken; and where the appeal is taken more than 30 days after the entry of the judgment or order sought to be reviewed, the factual and legal grounds for the appeal time being tolled;

(4) *Attorneys for Parties Against Whom the Appeal Is Not Taken.* Designate by name and address the attorney of record for each other party to the proceeding below against whom the current appeal is not taken;

(5) *Pro Se Litigants.* If there is no such attorney for any party, designate the name and last known address for each such party;

(6) *Transcript.* Contain the designations of the transcript as required by Rule 9(e); and

(7) *Forms.* Comply substantially with Official Forms A and B of these Rules. The provisions of subsections (4) and (5) above shall apply generally in any appeal including all direct appeals of criminal convictions whenever the appellant, in compliance with subsection (3) above, identifies the codefendants with whom appellant was tried.

(8) *Appeal Caption.* The caption of the appeal shall contain only the names of the parties below taking the appeal and the names of the parties against whom the appeal is taken.

(9) *Copy of Judgment to Be Reviewed.* A copy of the order of judgment sought to be reviewed, and any separate rationale for it, if available, shall be attached to the notice of appeal and to the notice of cross appeal if different from the notice of appeal, and if not available, a statement indicating such unavailability shall be included.

(d) Use of Pseudonyms. All appeals concerning domestic relations matters shall be captioned and reported with the full names of the individual parties, except that the following shall be captioned and reported by use of appropriate pseudonyms selected by the Court: matters concerning adoption, termination of parental rights, child custody and visitation, juvenile delinquency proceedings and any other domestic relations matters, which in the discretion of the trial court, a lower appellate court or this Court, are deemed to be of a sensitive nature. In such cases, the parties shall, within 10 days of the filing of the notice of appeal submit to the Court for its approval a stipulation providing for the use of pseudonyms, which sets forth and is consistent with the pseudonyms used in the court below or, in the absence of a stipulation, the Court may order the use of pseudonyms sua sponte.

(e) Joint or Several Appeals. Any 2 or more parties interested jointly, severally or otherwise in a judgment or order may join in an appeal therefrom, or any of them may appeal separately. When parties have filed

separate timely notices of appeal, the appeals may be joined or consolidated by the Court.

(f) Death of a Party.

(i) *Before Notice of Appeal Is Filed.* In civil cases, if a party entitled to appeal shall die before filing a notice of appeal, the same may be filed by the personal representative of the party; if the party has no personal representative, the same may be filed by the attorney of record for the party in the trial court within the time prescribed by law.

(ii) *After Notice of Appeal Is Filed.* After a notice of appeal is filed, substitution of parties shall be effected in accordance with these Rules.

(g) Disclosure of Corporate Affiliations and Financial Interest. Each party shall file a Disclosure of Corporate Affiliations and Financial Interest, as provided for in Form P of these Rules, within fifteen (15) days of the notice of docketing the appeal, or concurrently by a party with the filing of a motion or other document seeking to expedite the proceedings, and within two (2) days of service of such a document by all other parties. However, when the State of Delaware or any other governmental entity is a party, a Disclosure of Corporate Affiliations and Financial Interests shall be filed only if that party has pertinent information to report.

CREDIT(S)

[Amended effective April 1, 1998; amended effective April 1, 1999.]

COMMITTEE COMMENTARY

Reference: Former Rule 5. An appeal may be commenced only by a notice of appeal. The prior practice under Rule 5(2) and 5(3) of filing a praecipe for the issuance of a writ is abolished. The notice of appeal no longer needs to be accepted. Compare, Trowell v. Diamond Supply Co., 47 Del. 422, 91 A.2d 797, 802 (Supr.1952). It need only be served. See Official Forms A and B.

Sup.Ct.Rules, Rule 7, DE R S CT Rule 7

Current with amendments received through 1/1/2009

APPENDIX 2

IN THE SUPREME COURT OF THE
STATE OF DELAWARE

[1]_____,

[2]_____ Below,
Appellant,

No. [5]_____, 19___

v.

[3]_____,

[4]_____ Below,
Appellee.

NOTICE OF APPEAL

To: [6]_____

PLEASE TAKE NOTICE that [1]_____, [2]_____ below-appellant, does hereby appeal to the Supreme Court of the State of Delaware from the [7]_____ of the [8]_____, in and for [9]_____ County, by [10]_____, dated [11]_____, in [12]_____ in that court. A copy of the decision sought to be reviewed is attached hereto. [13]

The name and address of the attorney below for appellee is [6]_____. The party

against whom the appeal is taken is [3]_____.

The name and address of the attorney below for the party against whom the appeal is not taken is [14]_____. The party against whom the appeal is not taken is [15]_____.

PLEASE TAKE FURTHER NOTICE that appellant hereby designates the transcript in accordance with Rules 7(c)(6) and 9(e)(ii) in the following manner:

[16]_____
[or] [17]_____

Dated: _____ _____

[18]_____
Attorney for [1]_____
[2]_____ Below-Appellant

Instructions for Insertions:

[1] Appellant's name.

[2] Appellant's lower court status.

[3] Appellee's name.

[4] Appellee's lower court status.

[5] Leave blank. The Supreme Court Clerk's Office will assign an appeal number upon receipt of the notice of appeal.

[6] Name and address of the appellee's counsel.

[7] Substantive nature of the decision from which the appeal is taken.

[8] Lower court.

[9] County in which the lower court sits.

[10] Name of the judge who rendered the decision on appeal.

[11] Date of the decision on appeal (and the date of the final order, if different).

[12] Complete lower court case number.

[13] Attach a copy of the decision sought to be reviewed, if available. If the decision is not available, include in the notice of appeal a statement indicating such unavailability.

[14] Name and address of the counsel for the party against whom the appeal is not taken, if any.

[15] Name of the party against whom the appeal is not taken, if any.

[16] If ordering the preparation of transcript for the appeal, either designate transcript or state that a separate designation of transcript is set forth in attached Exhibit A. Whether stated within the notice of appeal or in an attached Exhibit A, the designation should clearly identify by name, date and time, the proceedings, or part thereof, that need to be transcribed for the appeal.

[17] If not ordering the preparation of transcript, either state that here or state that Statement in Lieu of Transcript in accordance with Official Form D is attached hereto.

[18] Name, address, telephone number and Delaware Bar ID number of the appellant's counsel.

APPENDIX 3

IN THE SUPREME COURT OF THE
STATE OF DELAWARE

[1]_____,

[2]_____ Below,
Appellant,

No. [5]_____, 19___

v.

[3]_____,

[4]_____ Below,
Appellee.

NOTICE OF APPEAL FROM
INTERLOCUTORY ORDER

To: [6]_____

PLEASE TAKE NOTICE that [1]_____ hereby petitions this Court to accept an appeal from an interlocutory order of the [7]_____ and represents as follows:

(1) The interlocutory order was entered on [8]_____;

(2) Application for certification was filed in the trial court on [9]_____;

(3) Response by appellee was filed in the trial court on **[10]**_____.

(4) The action of the trial court with respect to such application was as follows: **[11]**_____.

The name and address of the attorney for appellee is as follows: **[6]**_____.

The party(ies) against whom the appeal is taken is (are) **[3]**_____.

Dated: _____

[12]_____
Attorney for **[1]**_____
[2]_____ Below-Appellant

Instructions for Insertions:

[1] Appellant's name.

[2] Appellant's lower court status.

[3] Appellee's name.

[4] Appellee's lower court status.

[5] Leave blank. The Supreme Court Clerk's Office will assign an appeal number upon receipt of the notice of appeal.

[6] Name and address of the appellee's counsel.

[7] Trial court.

[8] Date of the interlocutory decision (attach a copy).

[9] Date that application for certification was filed in the trial court

[10] Date that response to the application for certification was filed by the appellee.

[11] Action by trial court, if any, on the application for certification.

[12] Name, address, telephone number and Delaware Bar ID number of the appellant's counsel.

APPENDIX 4

SUPREME COURT OF DELAWARE

CATHY L. HOWARD
Clerk

AUDREY F. BACINO
Assistant Clerk
LISA A. SEMANS
Chief Deputy Clerk
LaTOYA S. BRADY
Senior Court Clerk
DEBRA J. ZATLOKOVICZ
Senior Court Clerk

SUPREME COURT
BUILDING
55 THE GREEN
DOVER DE 19901

P.O. BOX 476
DOVER DE 19903

(302) 739-4155
(302) 739-4156
(302) 739-8091

September 18, 2008

Daniel A. Dreisbach, Esquire
Meredith M. Stewart, Esquire

RE: ***Bander Family Partnership v. Towerhill Wealth Management, et al.***, *No.* 474, 2008 **E-FILED** (C.A. No. 3830)

Dear Counselor:

The Court has requested me to inform you that no further action will be taken upon the interlocutory appeal filed in the above captioned matter until a

supplemental notice of interlocutory appeal is filed in compliance with Supreme Court Rule 42(d)(iii).

Very truly yours,

/s/ Cathy L. Howard

cc: The Honorable Leo E. Strine, Jr.
Stephen E. Jenkins, Esquire
Richard I.G. Jones, Jr., Esquire
Register in Chancery